

**RULES
OF
GEORGIA DEPARTMENT OF LABOR**

CHAPTER 300-2-3

EMPLOYMENT SECURITY LAW

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300-2-4-.08 Overpayments. Amended.

(1) Waiver of Overpayments.

(a) An individual shall be required to repay an overpayment of unemployment insurance benefits unless a timely application for waiver is filed and such repayment, in the discretion of the Commissioner or the Commissioner's designee, is determined to be inequitable under this rule and fault is not found to be attributable to that individual. Such determination shall not be appealable.

(b) A waiver of an unemployment insurance overpayment may not be granted if the request for such waiver is filed later than fifteen (15) calendar days following the release date of the Notice of Overpayment. Provided, however, that such time limitation may be extended, in the discretion of the Commissioner or the Commissioner's designee, upon a showing of extenuating circumstances which prevented the filing of a timely waiver request by the claimant and such circumstances were beyond the claimant's control.

(c) A waiver of an unemployment insurance overpayment may not be granted to any individual who has been expressly determined to have brought about such overpayment by the presentation of false or misleading statements or representations, whether or not such action has been determined fraudulent, when such individual could have or should have known such information presentation was false or misleading.

(d) A waiver of an unemployment insurance overpayment may be granted to an individual only if:

1. a timely application for waiver is filed;
2. fault is not attributable to the individual, as outlined in paragraph (c) of this rule;
3. the individual provides, at the time of the individual's request for a waiver, satisfactory evidence of circumstances showing repayment would genuinely work a financial hardship on the individual; and

4. the individual provides, at the time of the individual's request for a waiver, satisfactory evidence that he or she has no reasonable prospect of future employment or ability to repay the overpayment in the future, due to age, disability, or other good cause.

(e) Financial hardship exists if recovery of the overpayment would result directly in the individual's loss of or inability to obtain the minimal necessities of food, medicine, and shelter for a substantial period of time and such circumstances may be expected to endure for the foreseeable future.

(f) A waiver of an unemployment insurance overpayment may be issued by the department in whole or in part upon the finding of a court of law having proper subject matter jurisdiction which rules that error existed in the information utilized to establish such overpayment, whether or not such overpayment was determined to be fraudulent in nature. Additionally, if a court finds repayment of an overpayment should be waived by virtue of discharge in bankruptcy granted under provision of Chapter 7 or Chapter 13 of the Bankruptcy Code, waiver will be granted.

(2) Overpayment Penalties.

(a) Effective October 22, 2013, pursuant to requirements of Section 251 of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), amending Section 303 of the Social Security Act (42 U.S.C. 503) at subparagraph (a)(11)(A), and the authority of the Commissioner of Labor under Code Section 34-8-93, the monetary penalty imposed by Code Section 34-8-255 on individuals who commit fraud in connection with state or federal unemployment insurance benefits paid from this state's Unemployment Trust Fund is increased from 10 percent to a mandatory penalty of 15 percent of the overpayment, applicable to all federal and state unemployment fraud overpayments. Notices advising claimants of fraud overpayments shall include the penalty amount, an explanation of the reason for the overpayment, the reason the penalty has been applied, and the individual's appeal rights. Such penalty amounts may not be waived by the department or the Commissioner except pursuant to an order of a court with competent jurisdiction so ruling.

(b) Effective October 22, 2013, pursuant to additional requirements of Section 251 of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), amending Section 303 of the Social Security Act (42 U.S.C. 503) at subparagraph (a)(11)(B), and the authority of the Commissioner of Labor under Code Section 34-8-93, penalties imposed and collected under Code Section 34-8-255 and subparagraph (2)(a) of this Rule shall be deposited in the clearing account of the Unemployment Compensation Fund and, after clearance thereof, shall be immediately deposited with the secretary of the treasury of the United States to the credit of the account of this state in the Unemployment Trust Fund established and maintained pursuant to Section 904 of the Social Security Act, as amended, for the payment of benefits.

Authority O.C.G.A. §§ 34-8-70, 34-8-92, 34-8-93, 34-8-190, 34-8-254, 34-8-255, 42 U.S.C. 503, as amended.

300-2-4-.09 Partial Unemployment. Amended.

(1) "Weekly report of Low Earnings", Form DOL-408, may be filed by an employer

with respect to any complete pay-period week during which an otherwise full-time employee works less than full-time, due to lack of work only, and earns an amount not exceeding his unemployment insurance weekly amount, if known, plus \$50.00 or earns an amount not exceeding the maximum weekly benefit amount provided in the Employment Security Law, plus \$50.00, if the individual's unemployment insurance weekly benefit is not known. Partial unemployment claims shall not be submitted or allowed for vacation days regardless of whether such vacation days were requested by the employee or established by the employer. An employer filing partial unemployment claims must have a positive reserve account as that term is used in OCGA 34-8-155.

(2) Payments shall be made for partial unemployment only upon the approval by the Commissioner. Approval shall be based upon consideration of the conditions set forth in these regulations.

(a) The employer shall complete an affidavit in such form as approved by the Commissioner with respect to the partial unemployment for partial claims which are submitted on magnetic tape.

(b) Normally employers who have over twenty-five (25) employees affected by the partial unemployment may have such partial unemployment approved.

(c) Such unemployment must have been directly caused by lack of work and no other issues as to entitlement of unemployment benefits may be present; if other issues are involved the employee must report to the nearest career center in order to claim unemployment benefits.

(d) Form DOL-408, the questionnaire and any other correspondence shall be signed by the employer and transmitted to:

Georgia Department of Labor
Claims Administration
Suite 900, Sussex Place
148 Andrew Young International Blvd., N.E.
Atlanta, Georgia 30303-1751

(e) The employer's physical address, telephone number and DOL account number must be shown on forms. Forms with only post office mailing addresses or without telephone number and account number shall not be accepted.

(f) The Commissioner may provide for the filing of partial claims online and require the filing of all partial claims online.

(3) Six (6) consecutive weeks or total unemployment immediately following a week of full-time or part-time employment may be reported by an employer on Form DOL-408 or magnetic tape or online.

(4) Following those six (6) consecutive weeks of total unemployment for any worker reported on Form DOL-408, an employer who requests permission and shows justifiable cause may, upon approval of the Commissioner report four (4) additional weeks of total unemployment on Form DOL-408, provided the employer provides a firm return to work date for such employees within the four (4) week time period.

(a) If the employer can provide no firm return to work date or upon expiration of the approved time period for acceptance of partial unemployment claims, or when an employer ceases to file Form DOL-408 for any totally unemployed worker, the employer shall

immediately advise the employee to report in person to the nearest local career center of the department for the purpose of registering for work and reporting on his or her claim.

(b) Employers will not be authorized to file low earnings reports for regular breaks in seasonal employment. They may be filed when unusual circumstances require a break in employment at a time of normal, non-seasonal work.

(c) Any employer found by the Commissioner to be abusing the purpose and intent of the partial claims program will be restricted from using the partial claims program will be restricted from using the partial system for a period of three (3) years from the time of discovery of the violation. This restriction may be appealed to the Commissioner for possible reconsideration. Such appeal shall follow standard appeal provisions specified in the Employment Security Law for benefit appeals at OCGA Section 34-8-220.

(5) Because partial unemployment claims are employer-initiated claims based upon lack of work, such employers will receive no Form DOL-1199FF (notice of initial claim). The employer will receive its quarterly notification of charges against its account as provided by OCGA Section 34-8-157(d) and OCGA Section 34-8-159(4), provided, however, such employer will be furnished notice of the approval by the department of the initial partial claims.

Authority O.C.G.A. Secs. 34-8-70, 34-8-190.

300-2-5-.02. Benefit Appeals to an Administrative Hearing Officer. Amended.

(1) The appeal.

(a) Any party of interest dissatisfied with an administrative determination may file in writing a notice of appeal with the department, setting forth the name of the claimant and the social security number contained on the determination and the date of such determination. An appeal may be filed online via internet, by mail, by overnight statutory mail, or by hand delivery to the department.

(b) A determination establishing or denying a right to draw benefits shall be deemed final, unless a written appeal is filed within fifteen (15) days after the determination is handed to or mailed to an interested party. An appeal will be considered timely filed if it is properly filed via the internet (in accordance with instructions provided by the department for such filing), postmarked, or hand delivered within fifteen (15) days of the mailing date of the determination. For purposes of these rules, a postal meter mark will not be considered to be a postmark. Determinations which are appealed via alternative means of delivery such as private courier, facsimile transmittal, or otherwise in parcels lacking physical evidence of delivery by the U.S. Postal Service shall be deemed filed on the date the appeal is received by the department pursuant to Official Code of Georgia Annotated Section 50-13-23.

(c) An employer who is liable for the payment of unemployment insurance tax, is reimbursable or is a governmental agency; who has paid that individual insured wages for services; and who is entitled to notice of claim filed by that individual as the most recent employer, as defined by O.C.G.A. Section 34-8-43, shall be deemed to be an interested party to the administrative determination of such claim.

(2) The notice of hearing.

(a) Claimant benefit hearings shall be scheduled promptly to be conducted by telephone. The Chief Administrative Hearing Officer shall determine the time, place, and manner in which telephone appeals hearings shall be conducted. Once a hearing has been scheduled,

postponement or continuation of the hearing is within the discretion of the Chief Administrative Hearing Officer or their designee or, if the hearing has commenced, the administrative hearing officer presiding over the hearing. In person hearings will only be scheduled when physical impairments of the interested parties and/or witnesses, the complexity or nature of the case and other pertinent factors are shown to the Chief Administrative Hearing Officer or their designee, who shall determine whether the need for an in person hearing has been established, and the time, place, and manner in which any such in person hearing shall be conducted.

(b) Hearings conducted telephonically, except where waiver is given, shall be heard by an administrative hearing officer no earlier than ten (10) days after written notice of the time and place is mailed to the interested parties. In-person appeals, when allowed and except where waiver is given, shall be heard by an administrative hearing officer at the earliest possible date, but no earlier than seven (7) days after written notice of the time and place is mailed to the interested parties.

(c) The notice of hearing shall cite the sections of law pertinent to the appeal and include a general statement of the issues involved.

(3) The hearing.

(a) The administrative hearing officer shall administer the oath to all witnesses prior to accepting testimony and shall conduct the hearing in an orderly manner, maintaining control and preventing any disruption of the hearing process. The administrative hearing officer shall develop the record by conducting appropriate inquiries and shall allow each party an opportunity to examine and cross-examine witnesses on all matters pertinent to the issues. No testimony shall be taken that does not permit the parties of interest an opportunity for cross-examination. Any individual who disrupts the procedures, after warning, may be ejected and denied any further participation in the hearing.

(b) Issuance of subpoenas. Subpoenas to compel the attendance of witnesses and the production of records pertinent to any hearing of an appeal shall be issued by the Chief Administrative Hearing Officer upon request therefor from a party of interest, including the department. The party requesting said subpoenas shall indicate the need therefor and shall have the responsibility of serving said subpoenas.

(c) A witness fee of \$ 10.00 per day shall be paid upon request to a subpoenaed person in attendance; other than an employee of an employer subpoenaed by that employer. The total fee shall not exceed \$ 30.00 and shall be mailed to the address of the subpoenaed witness. In addition, an allowance of \$.20 per mile shall be paid, up to a maximum of \$ 20.00, for attendance of a witness at a hearing.

(d) Appeals involving multi-claimants or a labor dispute may be heard by a three-person tribunal consisting of an administrative hearing officer, as chairman, and two other members appointed by the Commissioner for that purpose, except when the administrative hearing officer is designated to hear the matter alone. When heard by a three-person tribunal, the decision of two-members of the tribunal shall constitute the decision of the tribunal. The other member may file a dissenting report giving reasons for not agreeing with the decision.

(e) Appeals involving multi-claimants or involving a labor dispute may be heard at any place designated by the chairman of the three-person tribunal or the designated administrative hearing officer hearing these appeals.

(4) Form and contents of decision. The administrative hearing officer shall observe the suggestions of the Employment and Training Administration, United States Department of Labor in regard to the form and contents of benefit decisions.

(5) A postponement of the hearing may be granted upon request showing providential cause will prevent the attendance of a party or essential witnesses. A request for postponement must be made at the earliest practical time and must be made in writing or by facsimile transmission. In the absence of very unusual circumstances, a business engagement will not constitute good cause for postponement. Such requests may be granted or denied at the discretion of the Chief Administrative Hearing Officer.

(6) Requests to reopen a hearing. Any interested party, including the department, who fails to appear may request to reopen a hearing within fifteen (15) days after the administrative hearing officer's decision is issued. The petition shall state fully the ground upon which the request to reopen a hearing is sought, giving complete details for the failure to appear as scheduled. A new hearing will then be scheduled to cover the issue of the party's failure to appear as scheduled and may also include the issues raised on the initial appeal. In the absence of very unusual circumstances a business engagement will not constitute good cause to reopen a hearing. The petition to reopen a hearing may be granted upon a showing of providential cause for failure to attend or failure to give timely notice of inability to attend the original hearing.

(7) Correction of error and augmentation of the record. Any interested party, including the department, may request correction of an administrative hearing officer or the board of review decision if the request is made in writing and filed or mailed within fifteen (15) calendar days of the release date of the decision. The administrative hearing officer or the board of review retains jurisdiction to reopen the hearing, amend or correct any decision which is not final, or exercise continuing jurisdiction as provided by the rules pertaining to OCGA Section 34-8-220 unless the board of review has accepted an appeal. Whenever a request for correction is submitted to the administrative hearing officer or the board of review, a decision will be issued and new appeal rights will be established.

(8) Requests for removal of an administrative hearing officer from a case. A party may request that an administrative hearing officer remove himself or herself from a case on the basis of partiality, interest or prejudice. An administrative hearing officer's employment with the department shall not, by itself, be sufficient cause for removal of an administrative hearing officer from a case. The request for removal must be made in writing prior to the hearing, unless the reason for the request was not or could not have been known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the administrative hearing officer agrees that he or she should be reassigned, another administrative hearing officer will be assigned to the case. However, if the administrative hearing officer finds no reason to remove himself or herself, he or she will rule on the request verbally during the hearing and explain the basis for the ruling. Challenges to the partiality of the administrative hearing officer will not result in a delay of the hearing. Appeals pertaining to the partiality of the administrative hearing officer may be filed consistent with the time limitations for appealing the decision.

Authority O.C.G.A. Secs. 34-8-70, 34-8-43, 34-8-220.

300-2-9-.07 Educational Service Workers. Amended.

(1) Prior to January 1, 2015:

(a) Benefits based upon service in employment defined in subsections (h) and (i) of Code Section 34-8-35 and performed for an educational employer, including service in employment for any governmental or non-profit educational institution or any educational service agency, are

subject to the benefit payment limitations described in OCGA Section 34-8-196(a) whenever the conditions in subparagraphs (a)(1), (a)(2), or (a)(3) of that Code Section apply with respect to such service

(b) Benefits shall be denied to an individual in accordance with OCGA Section 34-8-196(a) only if such individual has earned base period wages with an Educational employer (as defined above) or the individual's most recent employer in accordance with O.C.G.A. Section 34-8-43 is an educational employer (as defined above).

(c) Retroactive benefits with respect to non-professional educational workers in accordance with O.C.G.A. Section 34-8-196(a)(2) are payable only under the following conditions:

1. Despite reasonable assurance having been provided to the individual that the same or substantially similar work would be available in the second academic term or year, no such work is available; and

2. Timely claims for benefits were filed for each week claimed during the break between terms or years; and

3. All other eligibility conditions of the Employment Security Law including, but not limited to, O.C.G.A. Section 34-8-195 were met for each week claimed; and

4. The individual reopens the claim within fourteen (14) calendar days after the beginning of the next successive school term or year or after being informed by the employer (as defined above) that the expected work would not be available, whichever date occurred first.

(2) On or after January 1, 2015:

(a) Benefits based upon service with any educational institution (as defined in OCGA Section 34-8-196), are subject to benefit payment limitations described in O.C.G.A. Section 34-8-196(b).

(b) Benefits shall be denied to an individual in accordance with O.C.G.A. Section 34-8-196(b) only if such individual has earned base period wages with an educational institution (as defined in OCGA Section 34-8-196) or the individual's most recent employer in accordance with OCGA Section 34-8-43 is an educational institution (as defined in OCGA Section 34-8-196).

(c) Retroactive benefits with respect to non-professional educational service workers in accordance with OCGA Section 34-8-196(b)(2) are payable only under the following conditions:

1. Despite reasonable assurance having been provided to the individual that the same or substantially similar work would be available in the second academic term or year, no such work is available; and

2. Timely claims for benefits were filed for each week claimed during the break between terms or years; and

3. All other eligibility conditions of the Employment Security Law including, but not limited to, O.C.G.A. Section 34-8-195 were met for each week claimed; and

4. The individual reopens the claim within fourteen (14) calendar days after the beginning of the next successive school term or year or after being informed by the educational institution (as defined above) that the expected work would not be available, whichever date occurred first.

Authority O.C.G.A. Secs. 34-8-70, 34-8-190, 34-8-196.